

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TUFENKIAN IMPORT/EXPORT VENTURES, INC.

Plaintiff,

08 CIV 4953(SAS)

-against-

**NOTICE OF MOTION**  
(filed electronically)

TRUETT FINE CARPETS & RUGS AND  
DAVID TRUETT,

Defendants.

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PLEASE TAKE NOTICE that upon the annexed Affidavit of David Truett dated July 21, 2008, the Declaration of Anthony Xanthakis, Esq., dated July 21, 2008, the Memorandum of Law of Anthony Xanthakis, dated July 21, 2008 and upon all the exhibits annexed thereto and all the proceedings had herein, the undersigned will move this Court at the Courthouse located at 500 Pearl Street, New York, New York, before the Hon. Judge Shira A. Scheindlin on a date to be determined by the Court or as soon as counsel can be heard, for an order under Federal Rules of Civil Procedure 12(b), dismissing plaintiff's summons and complaint for lack of personal jurisdiction of this court over the defendants.

Opposition papers, if any, shall be served on or before August 21, 2008 pursuant to the Court's scheduling order.

Reply papers, if any, shall be served on or before September 12, 2008, pursuant to the Court's scheduling order.

Dated: July 21, 2008  
New York, New York



Yours, etc.,

GALVANO & XANTHAKIS, P.C.

By: 

Anthony C. Xanthakis, Esq. (2254)  
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TO: Ronald William Meister  
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but we also sell goods regionally and outside of Texas. The majority of our sales outside the State of Texas are in Oklahoma and Colorado. All goods are sold out of the single location of the Dallas/Ft. Worth showroom. Occasionally, the clients may request those goods to be shipped to a different location. Truett Carpets grosses approximately \$2,000,000 per year. Approximately 95% or \$1,900,000 of annual sales are for Texas companies and/or residents. Approximately 5% or \$100,000 of annual sales are for companies or residents outside of Texas.

7. In approximately November 2000, I was approached by Neal Birnbaum from Tufenkian Import/Export, the plaintiffs in this case, about the prospect of my company selling their rugs in the Dallas/Ft. Worth market as its exclusive distributor in the area. Tufenkian also had distributors in Houston, San Antonio, and Austin exclusively representing Tufenkian's goods in those markets.

8. Though no formal agreement existed, my company bought Tufenkian Rugs from November 2000 until June 2006 which we would sell to the interior design trade and to the public, both individuals and businesses.

9. I sold no Tufenkian goods in the State of New York. Pursuant to the agreement with Tufenkian, my potential clients for Tufenkian rugs were in the Dallas/Ft. Worth market and surrounding region.

10. In April 2006, Tufenkian sent me a letter terminating our relationship, leaving me with a stock of Tufenkian rugs I bought from them for showroom inventory of approximately \$150,000.00. Tufenkian then opened a company-owned showroom approximately one mile from my showroom to sell goods in the Dallas/Ft. Worth market. Tufenkian continues to own and operate the showroom in the Dallas/ Ft. Worth market.



11. Over the years of buying rugs from Tufenkian I visited them in New York only on two occasions. I visited them in conjunction with my two buying visits to the New York Metro Rug Alliance, which conducted its first market in September 2004. Before the New York Metro Rug Alliance was formed, I traveled to Atlanta, Georgia to attend the Atlanta Rug Market. No other employees from Truett Fine Carpets & Rugs traveled to New York for a buying trip or to otherwise conduct business for the showroom. From November 2000 until September 2004, I visited with Tufenkian representatives at the Atlanta Rug Market approximately six times. Additionally, Tufenkian representatives would personally visit the Truett Fine Carpets and Rugs showroom in Dallas on a continual basis and multiple times per year. I estimate that Tufenkian representative(s) visited the Truett Fine Carpets and Rugs showroom 24 times over a period of 5 to 6 years.

12. A large number of rug dealers and showrooms like Truett Fine Carpets & Rugs are invited to attend the New York Metro Rug Alliance Trade Show by Tufenkian and other vendors in the New York and New Jersey area. I never traveled to New York or Atlanta for the sole purpose of meeting with Tufenkian. My trips included visits with other rug vendors, specifically, Megerian, Michaelian & Kohlberg, Samad, Nargizian and others.

13. The rugs I bought from Tufenkian and the other vendors were shipped by the companies from New York or New Jersey (or another Tufenkian dealer around the country if the dealer had the stock my showroom needed). I then sent them payment from Texas, by check to New York.



14. Truett Fine Carpets and Rugs and I have no places of business, facilities, personal property, real property, bank accounts, employees, agents, sales persons or other entities in the State of New York. We do not market our goods in the State of New York.

15. Truett Fine Carpets and Rugs and I have no telephone listings, manufacturing facilities, offices, warehouses or inventory in the State of New York. All of the goods supplied by Truett Fine Carpets and Rugs are kept in Dallas, Texas.

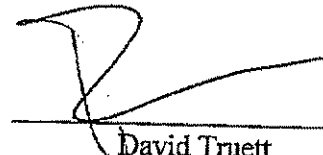
16. Truett Fine Carpets and Rugs and I do not advertise in New York or target customers in New York through any print media, television, radio, internet or otherwise.

17. As its dealer in the Dallas/Ft. Worth area, Tufenkian asked me to spend \$12,000 to \$20,000 per year in advertising specifically targeting the Dallas/Ft. Worth market. Any time my showroom's name appeared in a national or regional Tufenkian ad the location of my showroom was stated. As a dealer, I was prohibited from quoting merchandise for potential customers outside my regional area or be subject to a fine or loss of the Tufenkian line. Tufenkian also established price quoting guidelines for their dealer network to prevent potential rug buyers from calling multiple showrooms nationwide for pricing comparisons.

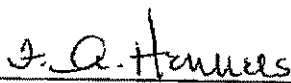
18. The complaint in this action alleges a copyright infringement from the sale of three rugs by my company to the Hilton Dallas Lincoln Center Hotel located 5410 LBJ Freeway, Dallas, Texas 75240.

19. My company did sell rugs to the Hilton Dallas Hotel. The transactions took place in Texas, entirely. The design firm that handled the transaction was a design firm located in Dallas, Texas. We did not engage in any New York activity to make this sale.



  
David Truett

Sworn to me before this  
21<sup>st</sup> day of July, 2008

  
NOTARY PUBLIC

